

# **EXHIBIT J**

Stephen M. Lobbin (admitted *pro hac vice*)

**The Eclipse Group LLP**

2020 Main Street, Suite 600

Irvine, California 92614

Tel: 949.851.5000

Mark W. Ford (10659)

Rachel Jacques (13250)

**Maschoff Brennan**

1389 Center Drive, Suite 300

Park City, Utah 84098

Tel: 435.575.1387

*Attorneys for Plaintiff Petter Investments, Inc. d/b/a RIVEER*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

**PETTER INVESTMENTS, INC.** d/b/a  
**RIVEER**, a Michigan corporation,

Plaintiff,

vs.

**HYDRO ENGINEERING, INC.**, a Utah  
corporation, and **CALIFORNIA**  
**CLEANING SYSTEMS**, a California  
company,

Defendants.

**DECLARATION OF DAVID C. PAULUS IN  
SUPPORT OF PLAINTIFF RIVEER'S  
MOTION FOR CLAIM CONSTRUCTION  
PURSUANT TO LPR 4.2(a)**

Civil Case No. 2:14-CV-00045

Judge Dee Benson

**AND RELATED COUNTERCLAIMS**

I, David C. Paulus, declare and state as follows:

1. I am the Principal of Paulus Consulting, LLC, and I have been retained by Plaintiff Petter Investments, Inc. d/b/a RIVEER (“Riveer”) to offer technical analysis and opinions regarding various issues in this action. I have personal knowledge of the facts stated herein, and if called to testify as a witness, I could and would testify competently thereto.

2. My education, licenses and certifications include (a) a Ph.D. in mechanical engineering from Colorado State University, (b) master’s and bachelor’s degrees in industrial and mechanical engineering, respectively, from The University of Tennessee, (c) a Professional Engineer (“P.E.”) license in mechanical engineering, and (d) a certification as a Human Factors Engineer. Besides my consulting work, I am an Associate Professor of Mechanical Engineering at the University of Arkansas-Fort Smith, College of STEM. I am also a named inventor on five patent applications under review at the United States Patent Office. Attached hereto as Exhibit 1 is a true and correct copy of my current Curriculum Vitae, which includes my complete qualifications, including a list of all publications authored in the previous 10 years. My compensation to be paid for the study and testimony in this action will be tabulated at a rate of \$200/hour, and as follows is a list of all other cases in which, during the previous 4 years, I have testified as an expert at trial or by deposition: (a) *Johnson Health Tech. Co. v. Icon Health & Fitness, Inc.*, P.T.A.B. Case No. IPR 2013-00463 (U.S. Patent No. 6,702,719); and (b) *Burns v. Valero Mktg. & Supply Co.*, Case No. 17-CIV-2011-698.

3. I have reviewed in detail the three patents-in-suit in this action (including the prosecution file history for each)—*i.e.*, U.S. Patent Nos. 6,164,298 (“the ‘298 patent”), 8,499,774 (“the ‘774 patent”), and 8,506,720 (“the ‘720 patent”). These patents all relate to

various mechanical engineering inventions, related to “modular wash rack” systems which enable users to wash vehicles and equipment in a manner that allows for water and debris to be efficiently collected and recycled and/or disposed in an environmentally-friendly way. I have also reviewed the parties’ “Proposed Claim Terms to be Construed” and other documents from this action.

4. I am familiar with and understand the concept in patent law of a “person of ordinary skill in the art” of a particular invention or patent, including how that concept plays into the process of “claim construction” whereby the terms used in a patent claim are defined, if necessary, according to a special meaning used by the inventor(s), or according to the understanding of a person of ordinary skill in the relevant art. Based on my background and experience in the mechanical and industrial engineering fields, I believe I am more than qualified to serve as an example of a “person of ordinary skill in the art” relating to the inventions claimed in the three patents-in-suit.

5. The ‘298 patent is quite simple mechanically. The patent is titled “Modular Cleaning Facility,” and it describes and claims a “modular cleaning system” including a “modular wash rack” including a “frame,” a “basin,” a “grate,” a “drainage fitting” and “coupling means,” as well as a “tube” and a “pump.” All of these terms—and others used such as “bottom surface” and “sloped tray”—are plain, ordinary, well-understood terms when used in the field of mechanical engineering, including particularly by a mechanical engineer of ordinary skill engaged in designing/engineering these types of “modular wash racks.” Also, nowhere in the claims, specification or file history of the ‘298 patent did the inventors assign any special or

exceptional meaning to any of these terms. Therefore, my conclusion is that no claim construction should be necessary for any of these terms.

6. I have reviewed the “proposed construction” of the claim terms “frame,” “bottom surface,” “grate,” and “sloped tray” in the ‘298 patent, as stated by Defendants. Without any explanation provided for why Defendants believe these proposed constructions are accurate or warranted, however, it is impossible to explain completely why these proposed constructions are inaccurate and unwarranted for the understanding of a person of ordinary skill in the art. A few problems with the proposed constructions are readily apparent, though. For example, Defendants’ proposed construction of “frame” includes the word “frame,” so the proposed construction does nothing to re-define the term (not that it is warranted here). Further, for the term “grate” Defendants appear to have taken an ordinary definition of this term (referring to Exhibit B from the Declaration of Mark W. Ford (“Ford Decl.”)) and inserted an extra word—“porous”—in the middle of the definition, as well as other narrowing phrases at the end of the ordinary definition. I see no reason in the patent specification or prosecution history for these limitations on the ordinary meaning of “grate.” Moreover, many grates are non-porous, such as the well-known “George Foreman Grill” and many other cooking grates (referring to Exhibits F-I of the Ford Decl.). If and when Defendants provide an explanation for their proposed constructions of these claim terms, I will be able to comment further on whether a person of ordinary skill in the art would agree.

7. The ‘774 patent also is mechanically simple. The patent is titled “Wash Pad With Evacuator,” and it describes and claims a “wash pad” including a “wash floor,” a “catch trough,” an “evacuator” including a “debris collector” and a “fluid mover,” an “elevator,” and a

“conveyer.” All of these terms are plain, ordinary, well-understood terms when used in the field of mechanical engineering, including particularly by a mechanical engineer of ordinary skill engaged in designing/engineering these types of “wash pads.” Also, nowhere in the claims, specification or file history of the ‘774 patent did the inventors assign any special or exceptional meaning to any of these terms. Therefore, my conclusion is that no claim construction should be necessary for any of these terms.

8. I have reviewed the “proposed construction” of three phrases in the ‘774 patent claims, as stated by Defendants. Without any explanation provided for why Defendants believe these proposed constructions are accurate or warranted, however, it is impossible to explain completely why these proposed constructions are inaccurate and unwarranted for the understanding of a person of ordinary skill in the art. A few problems with the proposed constructions are readily apparent, though. For example, each of Defendants’ proposed constructions include the terms to be construed, which seems to confuse more than clarify. If and when Defendants provide an explanation for their proposed constructions of these claim terms, I will be able to comment further on whether a person of ordinary skill in the art would agree.

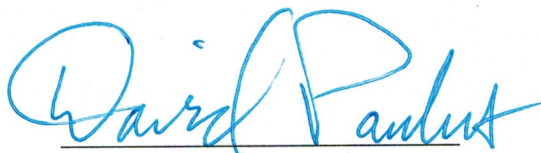
9. The ‘720 patent also is mechanically simple. The patent is titled “Wash Rack System With Side Trough,” and it describes and claims a “cleaning system” including a “wash floor,” a “side trough sized to accommodate a skid-steer loader,” a “guide rail,” and a “filtering system.” All of these terms are plain, ordinary, well-understood terms when used in the field of mechanical engineering, including particularly by a mechanical engineer of ordinary skill engaged in designing/engineering these types of systems. Also, nowhere in the claims,

specification or file history of the '720 patent did the inventors assign any special or exceptional meaning to any of these terms. Therefore, my conclusion is that no claim construction should be necessary for any of these terms.

10. I have reviewed the "proposed construction" of three phrases in the '720 patent claims, as stated by Defendants. Without any explanation provided for why Defendants believe these proposed constructions are accurate or warranted, however, it is impossible to explain completely why these proposed constructions are inaccurate and unwarranted for the understanding of a person of ordinary skill in the art. A few problems with the proposed constructions are readily apparent, though. For example, both of Defendants' proposed constructions include the terms to be construed, which seems to confuse more than clarify. Further, Defendants' proposed construction of "a side trough **adjacent** the wash floor" is "a side trough **abutting** the wash floor . . . ;" however, I have seen no support for substituting a term having a different meaning for the term the inventor chose to use. "Adjacent" is a simple term, and well understood by anyone, including a person of ordinary skill. If and when Defendants provide an explanation for their proposed constructions of these claim terms, I will be able to comment further on whether a person of ordinary skill in the art would agree.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and if called to testify, I could and would competently do so.

Executed on this 8<sup>th</sup> day of December, 2014, at Fort Smith, Arkansas.



# EXHIBIT 1



CURRICULUM VITAE

# David C. Paulus, PhD, PE, CHFEP

PROFESSIONAL ENGINEER (MECHANICAL)

CERTIFIED HUMAN FACTORS ENGINEER

Paulus.Consulting@gmail.com

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## EDUCATION

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Ph.D., Mechanical Engineering, Colorado State University, Fort Collins, Colorado, 2004

M.S., Industrial Engineering, University of Tennessee, Knoxville, Tennessee, 2001

B.S., Mechanical Engineering, University of Tennessee, Knoxville, Tennessee, 1999

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## PROFESSIONAL EXPERIENCE

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2004 – Present	Associate Professor, Mechanical Engineering, College of STEM, University of Arkansas - Fort Smith, Arkansas
2013 – Present	Clinical Associate Professor (Online), Engineering & Technology Management, College of Engineering and Architecture, Washington State University, Pullman, Washington
2008 - 2013	Mechanical Engineer Consultant, (NASA Exercise Device Phase I-III SBIR Grant funded), Streamline Automation, Huntsville, Alabama
2008	Industrial / Human Factors Engineer Consultant, Therma-Tru Doors, Roland, Oklahoma
2005	Mechanical Engineer, EDM Consultants, Inc., Fort Smith, Arkansas
2001 - 2003	Graduate Research and Teaching Associate, Department of Mechanical Engineering, Colorado State University, Fort Collins, Colorado
2003	UTSR Gas Turbine Industrial Research Fellow (US Department of Energy funded) Woodward Governor Company, Fort Collins, Colorado
2001 - 2002	Mechanical Engineer, Colorado State University Industrial Assessment Center, Fort Collins, Colorado
1999 - 2001	Graduate Research and Teaching Associate, University of Tennessee, Knoxville, Tennessee
1999	Mechanical HVAC Engineer, Endecon Engineering, Inc., Wilmington, Delaware
1998	Engineering Co-op, Eagle Bend Manufacturing, Clinton, Tennessee
1996-1998	Mechanical Engineering Intern, National Recovery Technologies, Inc., Nashville, Tennessee

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## LICENSES & CERTIFICATES

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Arkansas Professional Engineer #12744

Certified Human Factors Engineering Professional, Oxford Research Institute

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## PUBLICATIONS

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- Paulus, David C. and D.M. Settlage. "Automated Testing of the Controlled Resistance Exercise Device (C-RED) For Spaceflight." Biomedical Sciences Instrumentation 50:164-170 (2014).
- Paulus, David C. and D.M. Settlage. "Bilateral Symmetry of Ground Reaction Force with Motor-Controlled Resistance Exercise System Using a Mechanical Advantage Barbell for Spaceflight." Biomedical Sciences Instrumentation 48: 340-344 (2012).
- Paulus, David C., D.M. Settlage, and B.K. Schilling. "Comparison of Isoinertial to Simulated Inertial Force from a Controlled Resistance Exercise Device for Spaceflight." Biomedical Sciences Instrumentation 47: 41-45 (2011).
- Paulus, David C., M.C. Reynolds, and B. K. Schilling. "Ground Reaction Force Comparison of Controlled Resistance Methods to Isoinertial Loading." Biomedical Sciences Instrumentation 46: 93-298(2010).
- Paulus, David C., and B.K. Schilling. "Ground Reaction Force Comparison of Bilateral Symmetry with Pneumatic Resistance Squat Device and Free Weights." Biomedical Sciences Instrumentation 45: 419-423 (2009).
- Reynolds, M.C., and D.C. Paulus. "Optimal Load Trajectories for Resistance Exercise." ASME Early Career Technical Journal 7(1) (2009).
- Paulus, David C., R.F. Reiser., and W.O. Troxell. "Peak Lifting Velocities of Men and Women for the Reduced Inertia Squat Exercise Using Force Control." European Journal of Applied Physiology, 102 (3), 299-305 (2008).
- Paulus, David C., R.F. Reiser, and W.O. Troxell. "Interactive Variable Resistance Exercise System: Concept and Preliminary Results." Biomedical Sciences Instrumentation 44:237-242 (2008).
- Paulus, David C., M.C. Reynolds, and B.K. Schilling. "Validity and Reliability of a Controlled Pneumatic Resistance Exercise Device." Biomedical Sciences Instrumentation.44:53-58 (2008).
- Paulus, David C., and M.C. Reynolds. "Controlled Variable Resistance Squat Device System Response." Mid-South Area Engineering & Sciences Proceedings. 10124 (2007).
- Paulus, David C., and J.J. Paulus. "Activation of Abandoned Solar Hot Water System: A Hospital Expansion Energy Analysis." American Solar Energy Society. 0114 (2006).
- Paulus, David C., R.F. Reiser, and W.O. Troxell. "Peak Lifting Velocity with Resistance Force Based on Isometric Assessment." Medicine & Science in Sports & Exercise. 38(5), S290 (2006).
- Paulus, David C., R.F. Reiser, and W.O. Troxell. "Pneumatic Strength Assessment Device: Design and Isometric Measurement." Biomedical Sciences Instrumentation. 40, 277-282 (2004).

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## RESEARCH PRESENTATIONS

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- Paulus, David C., and D.M. Settlage, "Perceived Learning and Satisfaction using online Homework from Engineering and Economics Students" 2014 Midwest Section Conference of the American Society for Engineering Education, Fort Smith, AR, Sept. 24-26, 2014.
- Paulus, David C., and D.M. Settlage. "Automated Testing of the Controlled Resistance Exercise Device (C-RED) For Spaceflight" 51st International ISA Rocky Mountain Bioengineering Symposium. Denver, CO, April 4-6, 2014.

- Paulus, David C., and D.M. Settlege, "Online Engineering Education Using Blackboard Collaborate" 2013 Midwest Section Conference of the American Society for Engineering Education, Salina, KS, Sept. 18-20, 2013.
- Reich, A.J., J.E. Shaw, and D.C. Paulus. "Compact Controlled Resistance Exercise Device (C-RED) For Power Limited Missions." NASA Human Research Program Investigator's Workshop. Galveston, TX, February 12-14, 2013.
- Paulus, David C., and D.M. Settlege. "Bilateral Symmetry of Ground Reaction Force with a Motor-Controlled Resistance Exercise System Using a Mechanical Advantage Barbell for Spaceflight." 49th International ISA Rocky Mountain Bioengineering Symposium. Blacksburg, VA, March 22-24, 2012.
- Paulus, David C., A.J. Reich, J.K. DeWitt, J.E. Shaw, and S.S., Deaconu. "Controlled Resistance Exercise Device." NASA Human Research Program Investigator's Workshop. Houston, TX, February 13-16, 2012.
- Paulus, David C., D.M. Settlege., B.K. Schilling. "Comparison of Isoinertial to Simulated Inertial Force from a Controlled Resistance Exercise Device for Spaceflight." 48th International ISA Rocky Mountain Bioengineering Symposium. Denver, CO, April 15-17, 2011.
- Paulus, David C., M.C. Reynolds, and B.K. Schilling. "Ground Reaction Force Comparison of Controlled Resistance Methods to Isoinertial Loading." 47th International ISA Rocky Mountain Bioengineering Symposium. Laramie, WY, April 9-11, 2010.
- Reynolds, M.C., and D.C. Paulus. "The Best of Both Worlds: Hybrid Learning." 2009 ASEE Midwest Regional Conference. Lincoln, NE, Sept. 16-18, 2009.
- Paulus, David C. "Compact Controlled Force Crew Exercise System." Human Adaptation and Countermeasures Division, Wyle Labs & Johnson Space Center. Houston, TX, July 7, 2009.
- Paulus, David C. "Controlled Resistance Exercise Device for Spaceflight: Shear and Normal Ground Reaction Force Comparison." 17th Annual Arkansas Space Grant Consortium Symposium. Petit Jean Mountain, Morrilton, AR, April 24, 2009.
- Reynolds, M.C., and D.C. Paulus. "Comparison of Control Strategies for Resistance and Rehabilitation." 2008 IEEE Multi-Conference on Systems and Control. San Antonio, TX, Sept. 3-5, 2008.
- Paulus, David C. "Controlled Resistance Exercise Countermeasure." Human Adaptation and Countermeasures Division. Johnson Space Center, Houston, TX, August 15, 2008.
- Reynolds, M.C., D.C. Paulus. "Optimal Load Trajectories for Resistance Exercise." 2009 ASME Early Career Technical Conference. Arlington, TX, April 17-18, 2009.
- Paulus, David C., M.C. Reynolds, and B. K. Schilling. "Validity and Reliability of a Controlled Pneumatic Resistance Exercise Device." 45th International ISA Rocky Mountain Bioengineering Symposium. Copper, CO, April 5, 2008.
- Paulus, David C., R.F. Reiser, and W.O. Troxell. "Interactive Variable Resistance Exercise System: Concept and Preliminary Results." 41st Rocky Mountain Bioengineering Symposium. Copper, CO, April 4, 2008.
- Paulus, David C., M.C. Reynolds. "Controlled Variable Resistance Squat Device System Response." Mid-South Area Engineering & Sciences Conference. Oxford, MS, May 17, 2007.
- Paulus, David C., K. Towner, and C. Mastin. "Controlled Variable Resistance Countermeasure." Human Adaptation and Countermeasures Division. Johnson Space Center, Houston, TX, July 24, 2007.
- Paulus, David C., J.J. Paulus. "Activation of Abandoned Solar Hot Water System: A Hospital Expansion Energy Analysis." Solar 2006 - Renewable Energy Key to Climate Recovery. Denver, CO, July 7-13, 2006.
- Paulus, David C., R.F. Reiser, and W. O. Troxell. "Peak Lifting Velocity with Resistance Force Based on Isometric Assessment." American College of Sports Medicine. Denver, CO, May 31-June 5, 2006.

Edwards, H.W., and D.C. Paulus. "Reducing Remelting in Manufacturing Extruded Aluminum Products." Air & Waste Management Association's 95th Annual Conference & Exhibition. Baltimore, Maryland, June 23-27, 2002. Air & Waste Management Association, Pittsburgh, PA, paper 42919.

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## PROFESSIONAL DEVELOPMENT

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2013	Fifth Annual Arkansas Aerospace Summit, Fort Smith, AR
2013	Advanced Ergonomics and Injury Prevention: Theory, Practice and Litigation, Oxford Research Institute
2012	Solid Works: Advanced Part Modeling and Advanced Assembly
2011	Collaborative Institutional Training Initiative (CITI) Certification for NASA Human Subjects Research Curriculum
2008	NASA Space Sensors and Measurement Techniques Workshop
2008	Blackboard Learning System, Online course development training.
2006	Professional Engineering Examination Readiness Course, MGI \ National Society of Professional Engineers
2005	Dale Carnegie Course, Effective Communication & Human Relation
2003	Introduction to ANSYS, finite element analysis software course

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## PATENTS

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2009	Physical Therapy Device with Adaptive Control, Application numbers 1254534, 13010909, 13011021, 13011092, 13011332 pending.
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## PROFESSIONAL ACTIVITIES & HONORS

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2014	Member of Board of Directors for Rocky Mountain Bioengineering Symposium
2011	Best Presentation Award, Rocky Mountain Bioengineering Symposium
2008	Best Professional Paper Award, Rocky Mountain Bioengineering Symposium
2005	Human Relations Award, Dale Carnegie Course

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## FOUR YEAR LIST OF TESTIMONY

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JOHNSON HEALTH TECH CO. LTD. and JOHNSON HEALTH TECH NORTH AMERICA, INC.(Petitioners) v. ICON HEALTH & FITNESS, INC. (Patent Owner), CASE IPR2013-00463, Patent 6,702,719 (2014)

JAY BURNS and RICHARD BURNS B. VALERO MARKETING AND SUPPLY COMPANY, MEETAL, INC., MR KAT, INC., FROST OIL CO. No 17-CIV-2011-698(II) (2014)

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## COMPENSATION

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\$200/hr